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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/454,103 12/03/99 O'CONNELL

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EXAMINER

DOUGLAS, S

ART UNIT

PAPER NUMBER

3751

*3*

DATE MAILED:

07/31/00

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/454,103

Applicant

O'Connell

Examiner  
Steven O. Douglas

Group Art Unit  
3751



☒ Responsive to communication(s) filed on Dec 3, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) 19-23 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-18, 24, and 25 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3751

**DETAILED ACTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18,24 and 25, drawn to a filler neck arrangement, classified in class 141, subclass 46.
  - II. Claims 19-23, drawn to method of manufacturing a filler neck, classified in class 72, subclass 347.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as molding (i.e. a process not including deep drawing).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. John Nemazi on 7/26/00 a provisional election was made with traverse to prosecute the invention of I, claims 1-18,24 and 25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,2,4-7,12,24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Peickert.

The Peickert reference discloses a filler neck comprising a “funnel member” 16 with a larger inlet (proximate reference numeral 18 in Fig. 2), an “offset” smaller outlet (proximate reference numeral 16 in Fig. 2) and an integral formed tubular element (unlabeled) extending therefrom.

In regard to claims 6 and 7, the methods of forming (i.e. “drawing” in claim 6 and “braising” in claim 7) the device is not germane to the issue of patentability of the device itself. Therefore, these limitations are not given patentable weight.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-10,12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitley, II. et al. in view of Peickert.

The Whitley, II. et al. reference discloses a filler neck comprising a funnel member 129 with a barb to accept a plastic tube, but does not disclose the funnel as being seamless. The Peickert reference discloses another filler neck of a seamless construction (as discussed supra). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the funnel member to be seamless in construction as, for example, taught by the Peickert reference device wherein so doing would amount to mere substitution of one functional equivalent type construction for another within the same art and the selection of any of these type constructions would work equally well in the Whitley, II. et al. device.

In regard to claims 6 and 7, the methods of forming (i.e. "drawing" in claim 6 and "braising" in claim 7) the device is not germane to the issue of patentability of the device itself. Therefore, these limitations are not given patentable weight.

In regard to claims 8,9 and 10, The Whitley reference does not disclose an "adhesive" (claim 8), "resistance weld" (claim 9) or a "weld" (claim 10) type connections between the tubular element and the funnel member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Whitley, II. et al. device by substituting an "adhesive" (claim 8), "resistance weld" (claim 9) or a "weld" (claim 10) type connection for the

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barb type connection since the Examiner takes Official Notice that these type connections are all art recognized equivalents in the connecting art and that the selection of any of these known equivalents would work equally well in the Whitley, II. et al. device.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peickert in view of Bates et al.

The Peickert reference discloses a filler neck, but does not disclose an “anti-corrosive coating”. The Bates et al. reference discloses another filler neck that has an anti-corrosive coating to prevent the metal part from rust (see col. 5, lines 25-39). Therefore, it would have been obvious to provide an “anti-corrosive coating” in view of the teachings of the Bates et al. reference to prevent the metal part from rust (see col. 5, lines 25-39).

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitley, II. et al. in view of Peickert as applied to claim 1 above, and further in view of Bates et al.

The Whitley, II. et al. reference discloses a filler neck, but does not disclose an “anti-corrosive coating”. The Bates et al. reference discloses another filler neck that has an anti-corrosive coating to prevent the metal part from rust (see col. 5, lines 25-39). Therefore, it would have been obvious to provide an “anti-corrosive coating” in view of the teachings of the Bates et al. reference to prevent the metal part from rust (see col. 5, lines 25-39).

11. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peickert.

The Peikert reference discloses a filler neck (as discussed supra), but does not disclose a “junction plane as being between 60 and 85 degrees” (claim 13), “.1D<sub>2</sub> is less than .3D<sub>2</sub> and D<sub>1</sub> is


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at least  $1 \frac{1}{2}D_2$ " (claim 14),  $D_1$  is at least  $1 \frac{1}{2}$  times  $D_2$  (claim 16), or  $D_2$  is less than 35 mm and 30mm" (claim 18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the filler neck such that the "junction plane is being between 60 and 85 degrees" (claim 13), " $.1D_2$  is less than  $.3D_2$  and  $D_1$  is at least  $1 \frac{1}{2}D_2$ " (claim 14),  $D_1$  is at least  $1 \frac{1}{2}$  times  $D_2$  (claim 16), or  $D_2$  is less than 35 mm and 30mm" (claim 18), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (703) 308-0891.

SD

July 27, 2000



STEVEN O. DOUGLAS  
PRIMARY EXAMINER